

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. ~~RCRA~~-08-2006-0008

COPY

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FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:

Alchemist Transport Inc.,

Respondent.

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**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

INTRODUCTION

1. This civil administrative enforcement action is authorized by Congress in section 3008(a) of the Solid Waste Disposal Act, also known as the Resource Conservation Recovery Act, as amended (RCRA or the Act), 42 U.S.C. § 6928(a). The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" (Rules of Practice), 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA officials (Complainants) have been properly delegated the authority to issue this complaint.

3. EPA alleges that Alchemist Transport Inc. (Respondent) has violated the Act and the federally-authorized State of Montana regulations, ARM Title 17, Chapter 53 – Hazardous Waste, and proposes the assessment of a civil penalty, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to request a public hearing before an administrative law judge (ALJ) on any material fact alleged in the complaint or on the appropriateness of any proposed penalty.

5. To disagree with the complaint and assert its right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk, 999 18th Street, Suite 200 (8RC), Denver, CO 80202, within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty proposed in the complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. Quick resolution payments must be made by certified check or money order, payable to "Treasurer, the United States of America," and remitted to:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

A copy of the payment shall also be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 200
Denver, CO 80202-2466

Thomas E. Sitz
Enforcement Attorney
U.S. Environmental Protection Agency, Region 8
Office of Enforcement, Compliance and
Environmental Justice
999 18th Street, Suite 200 (ENF-L)
Denver, CO 80202-2466

A transmittal letter identifying this complaint and EPA docket number must accompany the remittance and copy of the payment.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Thomas E. Sitz, Enforcement Attorney, at 303-312-6918 (or 1-800-227-8917, extension 6918) or the address below. **Please note that calling Mr. Sitz or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this complaint, and to each count of this complaint:

8. EPA has jurisdiction of this matter under section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and may enforce federally-authorized state hazardous waste program requirements.

9. Pursuant to section 3006(b) of RCRA, 42 U.S.C. § 6926(b), effective July 25, 1984, EPA granted the State of Montana ("the State") final authorization to administer and enforce state hazardous waste program requirements in lieu of the federal program requirements. All references in this complaint to state regulations are those state regulations authorized by EPA under Section 3006(b) of RCRA. See 49 FR 28245 (July 11, 1984), 59 FR 02752 (January 19, 1994), 61 FR 55223 (October 25, 1996), and 65 FR 81381 (December 26, 2000).

10. The RCRA Export regulations are administered by EPA, not the states, since foreign policy interests and exporters' interests in expeditious processing are better served by EPA retaining these functions. 51 FR 28678 (August 8, 1986).

11. Pursuant to section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has given notice of this action to the State.

12. Respondent is a Canadian corporation, with its principal place of business located at 23720 - 72 Avenue, Langley, British Columbia, Canada..

13. Respondent is a "person" as defined in section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and ARM Title 17, Chapter 53 and thus is subject to regulation under RCRA.

14. "Hazardous waste," "Transporter," and "Manifest" are defined in ARM Title 17, Chapter 53 .

15. Respondent is a transporter of hazardous waste and transports hazardous waste in the United States and Canada.

16. Respondent has been issued EPA identification number AKR000003954.

17. ARM 17.53.435 (equivalent to 40 C.F.R. §263.20g)(1)) requires transporters who ship hazardous waste out of the United States to sign and date in item 15 of the shipping manifest indicating the date that the shipment left the United States, in accordance with the manifest instructions.

Count 1

18. From April 24, 2003 through May 1, 2003, a shipment of hazardous waste was transported from the Onyx Environmental Services (Onyx) facility in Henderson, Colorado to the Custom Environmental Services facility in Edmonton, Alberta, Canada (shipment #1). Shipment #1 utilized Uniform Hazardous Waste Manifest No. 68320 (manifest 68320).

19. Onyx was the transporter of shipment #1 from April 24 to April 28, 2003.
20. On April 28, 2003, shipment #1 was transferred from Onyx (transporter #1) to Respondent (transporter # 2).
21. Sometime between April 28 and May 1, 2003, Respondent transported shipment #1 across the United States/Canadian border at Sweetgrass, Montana/Coutts, Alberta to the Custom Environmental Services facility in Edmonton, Alberta.
22. Respondent failed to sign and date manifest 68320 to indicate the date that the shipment left the United States, in violation of ARM 17.53.435.

Count 2

23. From August 22, 2003 through August 29, 2003 a shipment of hazardous waste was transported from the Onyx Environmental Services (Onyx) facility in Henderson, Colorado to the Custom Environmental Services facility in Edmonton, Alberta, Canada (shipment #2). Shipment #2 utilized Uniform Hazardous Waste Manifest No. 68529 (manifest 68529).
24. Onyx was the transporter of shipment #2 from August 22, 2003 to August 28, 2003.
25. On August 28, 2003, shipment #2 was transferred from Onyx (transporter #1) to Respondent (transporter # 2).
26. On either August 28 or 29, 2003, Respondent transported shipment #2 across the United States/Canadian border at Sweetgrass, Montana/Coutts, Alberta to the Custom Environmental Services facility in Edmonton, Alberta.
27. Respondent failed to sign and date manifest 68529 to indicate the date that the shipment left the United States, in violation of ARM 17.53.435.

PROPOSED CIVIL PENALTY

28. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes EPA to assess a penalty of up to \$27,500 per day for each violation of the Act occurring between January 30, 1997 and March 15, 2004. See the Civil Monetary Penalty Inflation Adjustment Rule at 69 Federal Register 7121, 7126 (February 13, 2004). Section 3008(a)(3) of RCRA also requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with the statutory and regulatory requirements in assessing a civil penalty. The penalty proposed below takes into account the statutory factors and was calculated in accordance with EPA's June 2003. RCRA Civil Penalty Policy (as amended January 11, 2005). EPA uses this penalty policy to provide a rationale and consistent application of the statutory factors to the facts and circumstances of a specific case.

29. In light of the statutory factors and the specific facts of this case, Complainants propose that Respondent be assessed a civil penalty of **five hundred sixteen dollars (\$516)** for the violations alleged in this complaint. The reasoning behind this proposed penalty is detailed in the penalty narrative and penalty calculation worksheet (Attachments 1 and 2) which are incorporated herein by reference.

30. The ALJ is not bound by EPA's penalty policy or the penalty proposed by Complainants, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the Act.

31. To discuss settlement or ask any questions you may have about this process, please contact:

Thomas E. Sitz
Enforcement Attorney
U.S. Environmental Protection Agency, Region 8
Office of Enforcement, Compliance and
Environmental Justice, Complainant
999 18th Street, Suite 200 (ENF-L)
Denver, CO 80202-2466
303-312-6918
sitz.thomas@epa.gov

Date: 20 September 2006 By: Sharon L. Kercher
Sharon L. Kercher, Director
Technical Enforcement Program

Date: 29 September 2006 By: David J. Janik
David J. Janik, Supervisory Attorney
Legal Enforcement Program

ATTACHMENT 1
NARRATIVE EXPLANATION TO SUPPORT \$516 PENALTY FOR:
ALCHEMIST TRANSPORT, INC.

Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA proposes the assessment of a civil penalty in the amount of \$516 against Alchemist Transport, Inc. ("Respondent") for the following violation:

VIOLATION - 1

The Respondent violated ARM 17.53.435 (40 CFR, Section 263.20(g)(1)) by failing to provide on two (2) manifests (block #15) the date hazardous waste left the United States to a foreign source (Canada).

1. Gravity Based Penalty: \$387

Potential for Harm: Minor - Respondent's failure to provide the date on two (2) manifests for hazardous waste shipped to a foreign source (Canada) constitutes a minor harm to the integrity of the RCRA program. By signing manifests with the specified date that hazardous waste left the United States (Coutts, Alberta/Sweetgrass, Montana), facilities demonstrate to EPA that they are properly managing hazardous wastes from cradle-to-grave, and are properly implementing the record-keeping aspect of the RCRA requirements. The Respondent's failure to date manifests has a minor adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

Extent of Deviation: Minor - By failing to date manifests when hazardous waste left the United States, the Respondent deviated from the regulatory requirements. Based on manifests reviewed, the Respondent has implemented some of the record-keeping requirements as intended (i.e., signing and dating manifests after receipt of hazardous waste from the first transporter), but failed to provide the required date that hazardous wastes were shipped to a foreign source.

The January 11, 2005 Revised Penalty Matrices for the RCRA Civil Penalty Policy (June 2003) provides a range of penalty amounts in the minor potential for harm/minor extent of deviation category. The penalty amounts range from \$129 to \$644 for the first-day gravity-based component. This violation was assessed \$387 for the first-day gravity-based penalty.

2. Multiple/Multi-day Penalty: \$129

A multi-day penalty was assessed for a total period of one (1) day of violation of these regulations (2 days of violation minus one(1)). The Respondent was found to be in violation of record-keeping aspects of the RCRA requirements. This violation

was found during two (2) shipments of hazardous wastes on April 24, 2003 and August 22, 2003.

The January 11, 2005 Revised Penalty Matrices for the RCRA Civil Penalty Policy (June 2003) provides a fixed penalty amount in the minor potential for harm/minor extent of deviation multiple/multi-day category. The penalty amount is \$129. Multi-day penalties are discretionary for all days of all violations designated minor/minor. This violation was assessed using \$387 for the gravity based penalty and \$129 for the multi-day penalty. The multi-day penalty was calculated as follows: 1 day of violation x \$129 = \$129.

3. Adjustment Factors

The information currently available to EPA does not justify use of discretionary adjustment factors to modify the assessed penalty amount. No evidence has been produced which indicates either the demonstration, or lack of good faith, willingness, negligence, or a history of noncompliance with respect to the same violation.


4. Economic Benefit

The Facility appears to have gained no economic benefit from this violation; i.e., the benefit, if any, was less than \$2,500.

5. Penalty

\$ 516

PREPARED BY:


Eric R. Johnson
Environmental Scientist
Technical Enforcement Program

9/28/06
Date

ATTACHMENT 2
PENALTY COMPUTATION WORKSHEET

Company Name: Alchemist Transport, Inc.
Company Address: 23720 72nd Avenue, RR#6
Langley, BC, Canada

Regulation Violated: ARM 17.53.435 (40 CFR, Section
263.20(g)(1))
Requirement Violated: Failure to indicate on manifests the
date hazardous waste left the United
States (Coutts/Sweetgrass)

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix..... \$387
 - (a) Potential for harm..... minor
 - (b) Extent of deviation..... minor
2. Select an amount from the appropriate multi-day
matrix cell..... \$129
3. Multiply line 2 by number of days of violation
minus 1..... $\$129 \times 1$
= \$129
4. Add line 1 and line 3..... \$516
5. Percent decrease for good faith..... N/A
6. Percent increase for willfulness/negligence..... N/A
7. Percent increase for history of noncompliance... N/A
8. Total lines 5 through 7..... N/A
9. Multiply line 4 by line 8..... N/A
10. Calculate economic benefit..... N/A
11. Add lines 4, 9 and 10 for penalty amount to be
inserted into the complaint..... \$516

IN THE MATTER OF: Alchemist Transport, LLC
DOCKET NUMBER: RCRA-08-2006-0008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the Complaint in the above-referenced matter was hand-carried to:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 200
Denver, Colorado 80202-2466

and that a true copy of the same was sent via Federal Express (FedEx tracking # 8015 5906 0503), along with a copy of EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, to:

Gary Zappone, President
Alchemist Transport Inc.
23720-72 Avenue
Langley, British Columbia V1M3K9
CANADA

Date: SEP 29 2006

By: Dayle De Arvil
Dayle De Arvil